

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **19995**

Docket Number CL-20062

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(Norfolk and Western Railway Company (Involving employees
(on lines formerly operated by the Wabash Railroad **Com-**
(**pany**)

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-7249)
that:

(1) **Carrier violated** the provisions of the Schedule for Clerks, effective May 1, 1953, when on May 23, 1972, it arbitrarily, capriciously and unjustly assessed a five (5) **day** penalty against Clerk B. Davis, in violation of the provisions of Rule **28 (a) and** the intent of Rule 28 (d) of the Schedule for Clerks.

(2) Claimant shall now be paid for **all** time Lost.

(3) In addition to amounts claimed above the Carrier shall pay Claimant an additional amount of one per cent compounded monthly.

OPINION OF BOARD: Claimant was an assistant switching clerk in the Carrier's Local Freight Office at Detroit, **Michigan**. She was charged with negligence in **handling** company business and failure to comply with the instructions of the Chief Clerk to the Agent, in his request to her to take certain phone billing on May 2, 1972. Following an investigative hearing on May 17, 1972, Carrier found her guilty of the charge and assessed a penalty of a five day suspension.

The Organization first argues that Claimant did not have a fair hearing in that the Hearing Officer was the accuser, the interrogator at the hearing and also the "judge and jury". The record of the hearing gives no indication of a denial of due process by the hearing officer and there is no **rule support** for Petitioner's position; even more significantly, this issue was not raised by Petitioner on the property and may not now be introduced for the first time (Awards 14641, **18656**, 19101, 19746 and many others).

The essence of the matter was that on the day in question Claimant was asked to take a billing by telephone by the Chief Clerk. She then informed him that she had too much work, couldn't take it, and was going home **sick** and left. She had worked the day before the incident and also on the following day; the facts are not in dispute.

The Board is not privileged to inquire into the motivation of **employees'** acts when the record is silent. Further we are not disposed to proclaim our expertise as psychologists, much less in the area of female behavior. Hence the underlying factors in this case escape us. However, on the face of it, the record indicates the Carrier had sufficient evidence in the hearing to support its conclusion of guilt. The penalty imposed was not excessive or arbitrary. We have no alternative but to deny the Claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and **Employees** within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim, denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 12th day of October 1973.